IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

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WRIT PETITION NO : 10389 of 1998

Between:

Machilipatnam Municipality,

represented by its Commissioner,

Machilipatnam, Krishna District.

..... PETITIONER

AND

1. The Chairman,

Labour Court, Guntur.

2. The Special Commissioner & Director

of Municipal Administration,

Government of Andhra Pradesh,

Hyderabad.

3. Gummadi Venkatapathi,

S/o.Nancharaiah, R/o.Bypass Road,

Nizampet, Near Pambalagudem,

14th Ward, Machilipatnam,

Krishna District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction, more particularly a Writ in the nature of Certiorari calling for the records relating to Award in I.D.No.283 of 1996, dated 31-10-1997 of the first respondent including G.O.Rt.No.3256, dated 17-12-1997 and quash the same as illegal, arbitrary.

Counsel for the Petitioner:MR.SRINIVAS DAMMALAPATI

Counsel for the Respondents 1 & 2 : G.P.for Finance & Planning

Counsel for the Respondent No.3: MR. S.RAMCHANDRA PRASAD

The Court made the following :

ORDER:

This Writ Petition is directed against an Award passed by the Labour Court, Guntur, in I.D.No.283 of 1996 dated 31-10-1997 wherein the claim petition filed by the third respondent under Section 2 A (2) of the Industrial Disputes Act was answered in favour of the workman holding that the removal of the respondent No.3 as illegal and further directed the petitioner to reinstate, the respondent No.3, with continuity of service, back wages and all attendant benefits.

Respondent No.3 herein, worked as an NMR in the petitioner Municipality between December 1985 and 27th September 1993. On 27.9.1993, his services were terminated orally. Before the Labour Court, though the petitioner initially made appearance, subsequently it remained *ex parte*. Therefore, the evidence of the respondent No.3 was recorded and after going through Exs.W.1 to W.3, the Labour Court came to the conclusion that the oral evidence of the workman coupled with the documents Exs.W.1 and W.2 would establish that the workman worked continuously for more than 240 days preceding 12 months of his removal from service and there was no notice issued to the respondent No.3 nor any compensation was paid as required under law before terminating his services. Therefore, the Labour Court found that the termination of the services of the respondent No.3 was violative of

Section 25 F of Industrial Disputes Act and the workman is entitled for reinstatement with continuity of service and all attendant benefits. Aggrieved by the same, the present Writ Petition is filed.

At the out set, the learned counsel for the petitioner- municipality contends that the Municipality was not given any opportunity to participate in the proceedings in the I.D. On the other hand, there is a mention that at the initial stage, an appearance was made on behalf of the Municipality, but thereafter, the Municipality remained ex parte. In the present affidavit appended to the writ petition filed by the Municipality, it was contended that there were two matters of identical nature which were entrusted to the local standing counsel, Machilipatnam and one Ramswamy, Suit Clerk and the Learned Standing Counsel went to Vijayawada on 29-3-1997 along with vakalaths and counters to be filed in I.Ds. The Learned Standing Counsel and the Suit Clerk waited at Sub-Court, Vijayawada, but surprisingly they came to know that the first respondent changed the camp place to Bheemavaram on the same day without conducting the Court at Vijayawada. Therefore, they addressed a letter to know the information as to the next date of hearing on 3-5-1997 i.e. after more than one month. Thereafter, on 17-10-1997, the Municipality sent counter and vakalaths through registered post to the Labour Court. Further it is stated that as there was no regular Commissioner to the Municipality and since the Local Standing Counsel who was looking after the matters of Municipality was selected and appointed as I Additional District Judge, the petitioner-municipality could not file application before the Labour Court to set-aside the *ex parte* award. Therefore, they have filed the present Writ Petition.

Except making these allegations, there is no evidence placed before this Court as to the letter received by the petitioner as to the conducting of camp Court at Vijayawada instead of Bheemavaram on that particular date, i.e., 29-3-1997 by the Labour Court. Even the allegations made are vague. They state that the case was supposed to be heard on 29-3-1997 at Vijayawada and a letter was sent to find out as to the next date of hearing was only on 3-5-1997. Thereafter, the counter and vakalaths were sent by registered post on 17-10-1997. This itself would show how callously the matter was dealt with by the petitioner. Therefore, they cannot blame anybody else in this regard except themselves. Be that as it may, even after going through the merits of the case, in the whole of the affidavit filed challenging the Award passed by the Labour Court, there is no assertion made by the petitioner that

the third respondent workman did not work for 240 days from 27-9-1993. In this regard, the only assertion made by the petitioner is that the respondent No.3 appointed only as Badili worker and he was not a regular employee and the maximum period for which he was engaged was not more than 89 days, giving an impression that there was some artificial gaps in between. But, categorically they have not asserted that respondent No.3 had not worked for 240 days preceding 27-9-1993 as required under law, except lamenting on the *ex parte* order passed by the Labour Court. Under identical circumstances, another I.D.No.282/96 also was disposed of on 31-12-1997 by the Labour Court and the said Award was subject matter of Writ Petition before this Court in W.P.No.9967 of 1998. This Court in the said writ petition, while upholding the Award passed by the Labour Court in reinstating the workman into service, limited the back wages to the extent of Rs.10,000/- only. Further it directed that the workman be reinstated into service with continuity service and other incidental benefits thereto.

This is a case where there was gross violation of Provisions of 25 F of Industrial Disputes Act. Neither any notice of termination nor one month notice or compensation as required under Section 25-F of Industrial Disputes Act was even paid to the respondent No.3-workman. Therefore, I am of the considered opinion that the Award of the Labour Court does not suffer from any infirmity or illegality and it does not call for interference of this Court under Article 226 of the Constitution of India, particularly, for the reason that even in the Writ petition filed before this Court, there is no denial that the workman has not worked for 240 days preceding the date of removal as contemplated under Section 25 F of the Industrial Disputes Act.

The Writ petition is accordingly dismissed. No order as to costs.

12-10-2004

Stp.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Chairman,

Labour Court, Guntur.

2. The Special Commissioner & Director

of Municipal Administration,

Government of Andhra Pradesh,

Hyderabad.

3. 2 CCs to Govt.Pleader for Finance & Planning (OUT)

4. 2 CD copies

THE HON'BLE MR JUSTICE C.V.RAMULU

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